

CHECKLIST FOR THE
PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY
ADMINISTRATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, AND THE
CALIFORNIA DEPARTMENT OF TRANSPORTATION REGARDING COMPLIANCE
WITH SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT, AS IT
PERTAINS TO THE ADMINISTRATION OF THE FEDERAL-AID HIGHWAY
PROGRAM IN CALIFORNIA

This checklist is designed to assist staff in following appropriate procedures for the Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act, as it Pertains to the Administration of the Federal-Aid Highway Program in California (Agreement). Start with step 1, check the appropriate answer and follow the “Go to. . .” instructions. Relevant stipulations of the Agreement to which the steps refer are *italicized* and appear in [brackets]. The checklist is for reference only, and does not constitute a “Memo to File.”

It is useful to recognize that, although this checklist is presented in steps, consultation is an ongoing process. Also, while the Section 106 process may be considered complete at several stages, if FHWA, SHPO, or other consulting parties disagree with any finding made pursuant to this Agreement, the Section 106 process must continue. Finally, FHWA shall honor the request of any Indian tribe for direct government-to-government consultation regarding an undertaking covered by this Agreement.

Note: For Local Assistance projects, all documents prepared under the Agreement must be submitted to the appropriate Caltrans district office for review by Caltrans professionally qualified staff (PQS). The Caltrans PQS will transmit the documents to FHWA and SHPO, as appropriate.

The checklist begins on the next page.
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ESTABLISH UNDERTAKING

1. Does the undertaking involve ground disturbance or otherwise have the potential to affect historic properties?
☐ YES. Go to Step 2.
☐ NO. Go to Step 3.
2. Will the undertaking occur on or affect lands held in trust by Indian tribes?
☐ YES. ***FOLLOW 36 CFR 800***
☐ NO. Go to Step 3.

PROFESSIONAL QUALIFICATIONS

The Agreement requires that all cultural resource studies carried out by Caltrans or its consultants must be conducted by or under the direct supervision of individuals who meet the Secretary of the Interior's Professional Qualifications Standards for the relevant field of study. PQS perform or directly supervise all cultural resource activities carried out under the terms of the Agreement, and conduct reviews of all local agency documents. The Agreement further requires that staff meet the minimum qualifications for the discipline in which expertise is required, as described in the Secretary of the Interior's Professional Qualification Standards (48 FR 44738-9). If there are questions regarding a staff member's qualifications, consult the Environmental Handbook (EH), or contact the appropriate branch chief in the Cultural and Community Studies Office of the Division of Environmental Analysis.

3. Have PQS been assigned to perform the appropriate cultural resources activities and reviews? (Check as many as apply.)
☐ YES. Go to Step 4.
☐ PQS for archeology will perform, supervise and/or review all activities and documents pertaining to archeological sites.
☐ PQS for historical archeology will perform, supervise and/or review all activities and documents pertaining to historical archeological sites.
☐ PQS for architectural history will perform, supervise and/or review all activities and documents pertaining to built environment resources.
☐ NO. A specialist qualified in the appropriate discipline must be involved. If none are available in the district, contact the appropriate Cultural and Community Studies Branch in the Division of Environmental Analysis before proceeding to Step 4.
4. Has the Caltrans PQS determined that this is a screened undertaking and has no potential to affect historic properties? [*Stipulation VII and Attachment 2*]
☐ YES. Go to Step 5.

- ____ NO. Historic properties may be affected. Go to Step 6.
5. Is it necessary to impose a condition on the undertaking to ensure that potential historic properties will not be affected? [*Stipulation VII and Attachment 2*]
- ____ YES. Further studies for 106 compliance are necessary. Go to Step 6.
- ____ NO. Document by completing a CE-Section 106 Checklist and/or a Memo to File.
SECTION 106 IS COMPLETE

EVALUATE HISTORICAL SIGNIFICANCE

6. Have appropriately qualified Caltrans PQS determined that:
- ____ All the resources within the APE qualify under one or more of the following categories (check as many as apply): [*Attachment 4*]
- ____ a) "Archaeological Property Types Exempt from Evaluation."
- ____ b) "Property Type 1: Minor, ubiquitous, or fragmentary infrastructure elements."
- ____ c) "Property Type 2: Buildings, structures, objects, districts and sites less than 30 years old."
- ____ d) "Property Type 3: Buildings, structures, objects, districts and sites so altered as to appear less than 30 years old."
- ____ e) "Property Type 4: Buildings, structures, objects, districts and sites 30 to 50 years old."
- ____ f) "Property Type 5: Buildings, structures, and objects moved within the past 50 years."
- ____ g) "Property Type 6: Altered buildings, structures, objects, districts, and sites that appear to be more than 30 years old."
- ____ There are no historic properties that require evaluation within the APE
- ____ YES. No historic properties are affected. Document finding to file (Negative HPSR). **SECTION 106 IS COMPLETE**
- ____ NO. Go to Step 7

EXEMPTION FROM EVALUATION

7. Can the resource be protected by fencing or flagging it as an Environmentally Sensitive Area (ESA)? [*Stipulation VIII.C.3 and Attachment 5*]
- ____ YES. Go to Step 8
- ____ NO. Go to Step 9
8. Are there any resources present within the APE that cannot be protected by an ESA?
- ____ YES. Go to Step 9

- _____ **NO.** Provide appropriate ESA information to Project Development, Construction and Maintenance personnel (Resident Engineer File) to protect properties during project activities through implementation of an ESA action plan. [Attachment 5]
Go to Step 12.

EVALUATION

All resources that do not qualify under the categories listed in Steps 6 or 7 above **must be evaluated** for National Register significance. Complete the appropriate cultural studies reports and submit the HPSR concurrently to FHWA and SHPO for review. Upon receiving the determination of eligibility documents, SHPO has 30 days to review and comment on the determination of eligibility. [Stipulation VIII.C.5-C.5(a)]

9. Did SHPO object to the determination of eligibility? [Stipulation VIII.C.5.b]

- _____ **YES.** FHWA and Caltrans must consult with SHPO to reach agreement within a mutually acceptable timeframe.

_____ If agreement is reached and historic properties are present, go to Step 10.

_____ If agreement cannot be reached, or a mutually acceptable timeframe cannot be reached, FHWA must obtain a final determination of eligibility from the Keeper of the National Register **before** proceeding to Step 10.

_____ If agreement can be reached and no historic properties are present, document and retain records of a finding of No Historic Properties Affected. [Stipulation IX.A.2] **SECTION 106 IS COMPLETE**

- _____ **NO.**

_____ If historic properties are present in the APE, go to Step 10.

_____ If no historic properties are present, document and retain records of a finding of No Historic Properties Affected. [Stipulation IX.A.2]
SECTION 106 IS COMPLETE

ASSESS EFFECTS

Prepare appropriate effect documentation relevant to the project and how it might affect historic properties. The procedures for transmitting effect notification or documentation to FHWA and SHPO depend on the type of effect involved (no historic properties affected, no adverse effect, or adverse effect).

10. Will historic properties be affected?

_____ **YES.** Go to Step 11.

_____ **NO.** Complete "No Historic Properties Affected" documentation, retain in files. Notify consulting parties and provide them documentation of the finding
[Stipulation IX.A.2]

11. Are the effects to historic properties considered to be "no adverse effects"?

_____ **YES.** Go to Step 13. [Stipulation X.B]

- _____ **NO.** Effects are adverse; go to Step 14.
12. Do either of the following Standard Conditions apply? *[Stipulation X.B.2.]*
- _____ The undertaking or the undertaking's effect is limited to rehabilitation of historic properties conducted in accordance with the Secretary of the Interior's Standards for Treatment of Historic Properties.
- _____ All historic properties or properties considered to be historic pursuant to Stipulation VIII.C.3 within the APE can be protected by designation of an ESA.
- _____ **YES.**
- _____ If the property is considered eligible for values that qualify if as eligible under Criteria A, B, or C in addition to or instead of Criterion D, consult with those tribes or other interested parties that attach significance to the property to determine whether an ESA will adequately protect those other values without other conditions or mitigations.
- _____ If yes, submit documented notification of the finding of "No Adverse Effect With Standard Conditions" to SHPO with concurrent submittal to FHWA and any consulting parties *[Stipulation X.B.2]* **SECTION 106 IS COMPLETE**
- _____ If no, Standard Conditions do not apply. Submit "No Adverse Effect" finding and supporting documentation to FHWA for review. Go to Step 13.
- _____ **NO.** Submit proposed "No Adverse Effect" finding and supporting documentation to FHWA for review. Go to Step 13.
13. Did SHPO agree with the "No Adverse Effect" determination? *[Stipulation X.B.1.b]*
- _____ **YES. SECTION 106 IS COMPLETE**
- _____ **NO.** FHWA consults to resolves the disagreement in accordance with Stipulation X.D.
- _____ If FHWA determines that the effect is not adverse, **SECTION 106 IS COMPLETE**
- _____ If FHWA determines that the effect is adverse, go to Step 14.

ADVERSE EFFECTS

14. Are the undertaking's effects to archaeological properties listed in or eligible for listing in the NRHP exclusively under Criterion D?
- _____ **YES.** Notify FHWA, SHPO, and any other appropriate consulting parties of the proposed Finding of Adverse Effect with documentation supporting the finding *[Stipulation X.C.2, XI.A]* Go to Step 15.

- _____ **NO.** Submit documentation supporting a finding of Adverse Effect to FHWA. Notify, on behalf of FHWA, any consulting parties and interested members of the public [*Stipulation X.C.1*].
- _____ If SHPO and any other consulting parties agree with the finding, go to Step 16.
- _____ If SHPO or any other consulting parties disagree with the finding, FHWA consults to resolve the disagreement in accordance with Stipulation X.D.
15. Did SHPO or any other consulting party object to the adverse effect finding within 30 days? [*Stipulation X.C.2*]
- _____ **YES.** FHWA consults to resolve the disagreement pursuant to Stipulation X.D.
- _____ **NO.** Go to Step 16.
16. FHWA, with assistance from Caltrans, consults to resolve adverse effects pursuant to 36 CFR 800.6(a) and 800.6(b)(1). Prepare an MOA and data recovery plan, if appropriate, in accordance with Attachment 6. [*Stipulation XI.A*] Did all signatories sign the MOA?
- _____ **YES. SECTION 106 IS COMPLETE.**
- _____ **NO.** If FHWA, SHPO and Caltrans cannot resolve adverse effects, invite ACHP to participate pursuant to 36 CFR 800.6(b)(2).
- _____ If the parties agree to a resolution, execute the MOA. **SECTION 106 IS COMPLETE.**
- _____ If the parties fail to resolve adverse effects, FHWA, SHPO or the ACHP may terminate consultation. Proceed in accordance with 36 CFR 800.7 [*Stipulation XI.E*].

POST REVIEW DISCOVERIES

17. Has a previously unidentified property been discovered or is there an unanticipated effect to a known historic property? [*Stipulation XV*].
- _____ **YES. Stop construction activity immediately** in the vicinity of the property and implement all reasonable measures needed to avoid, minimize, or mitigate further harm to the property. Notify FHWA, SHPO and, if appropriate, Indian Tribes or Native American groups that may attach religious or cultural significance to the affected property, the federal agency if federal lands are involved, or the local government within 48 hours of the discovery. If an NHL is affected, also include the Secretary of the Interior and the ACHP in the notification process.
- _____ If any of the notified parties respond within 72 hours of the notification, take their recommendations into account. Carry out appropriate actions or consult further with any commenting parties pursuant to Stipulation XV.2.
- _____ If none of the notified parties responds within 72 hours upon receipt of notification, proceed to carry out appropriate actions.
- _____ **NO.** Continue with project.

Section 106 PA checklist -- for reference only; it is not a “memo to file.”